

AMENDED IN SENATE JUNE 11, 1996
AMENDED IN ASSEMBLY MAY 14, 1996
AMENDED IN ASSEMBLY MAY 2, 1996
AMENDED IN ASSEMBLY MARCH 27, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 2738

Introduced by Assembly Member Kevin Murray

February 22, 1996

An act to amend Sections 44010 and 44237 of, and to add Section 44020 to, the Education Code, relating to education.

LEGISLATIVE COUNSEL'S DIGEST

AB 2738, as amended, K. Murray. Education: certificated employees: private school employees.

(1) Existing law disqualifies *a person convicted of any of various specified sex offenses* from eligibility for receipt of a teaching credential or from employment as a public school teacher; ~~a person convicted of any of various specified sex offenses~~. *Another provision of existing law requires that, with regard to applicants for specified positions with private schools, notice of convictions of specified sex offenses be supplied to a prospective private school employer in a criminal record summary.*

This bill would ~~add~~ *conform these provisions by adding various offenses to the list of those specified sex offenses* ~~various offenses notice of convictions of which existing that~~

would disqualify a person from receipt of a teaching credential or employment as a public school teacher. Existing law requires ~~to~~, with respect to these added offenses, that notice of convictions be supplied in a criminal record summary to a prospective private school employer.

(2) Existing law prohibits the provisions related to the requirement that every person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level require each new employee having contact with minor pupils and not possessing a valid California state teaching credential, or not currently licensed by another state agency that requires a criminal record summary, to submit 2 sets of fingerprints to the Department of Justice for the purpose of obtaining a criminal record summary from the department and the Federal Bureau of Investigation, from being construed to prohibit the employment of any person based upon his or her criminal record.

This bill would require every person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level to notify, in writing, the parents or guardians who reside with each pupil of that school whenever that school hires an employee who, in the course of his or her employment, will come in contact with minor pupils and who has been convicted of a sex offense, as defined to include the same offenses that would disqualify a person from eligibility for receipt of a teaching credential or from employment as a public school teacher.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 44010 of the Education Code is
- 2 amended to read:
- 3 44010. "Sex offense," as used in Sections 44020, 44237,
- 4 44346, 44425, 44436, 44836, 45123, and 45304, means any
- 5 one or more of the offenses listed below:



(a) Any offense defined in Section 220, 261, 261.5, ~~264~~
~~262, 264.1, 266, 266j, 267, 273a, 273d,~~ 285, 286, 288, 288a, 289,
311.3, 311.4, 313.1, 647b, 647.6, or former Section 647a,
subdivision (a), (b), or (c) of Section 243.4, ~~paragraph~~
~~(1), (2), (3), or (4) of subdivision (a) of Section 261,~~
subdivisions (b), (c), and (d) of Section 311.2, or
subdivision (a) or (d) of Section 647 of the Penal Code.

(b) Any offense defined in former subdivision ~~5—(5)~~ of
former Section 647 of the Penal Code repealed by
Chapter 560 of the Statutes of 1961, or any offense defined
in former subdivision ~~2—(2)~~ of former Section 311 of the
Penal Code repealed by Chapter 2147 of the Statutes of
1961, if the offense defined in those sections was
committed prior to September 15, 1961, to the same
extent that an offense committed prior to that date was
a sex offense for the purposes of this section prior to
September 15, 1961.

(c) Any offense defined in Section 314 of the Penal
Code committed on or after September 15, 1961.

(d) Any offense defined in former subdivision ~~4—(1)~~ of
former Section 311 of the Penal Code repealed by
Chapter 2147 of the Statutes of 1961 committed on or after
September 7, 1955, and prior to September 15, 1961.

(e) Any offense involving lewd and lascivious conduct
under Section 272 of the Penal Code committed on or
after September 15, 1961.

(f) Any offense involving lewd and lascivious conduct
under former Section 702 of the Welfare and Institutions
Code repealed by Chapter 1616 of the Statutes of 1961, if
that offense was committed prior to September 15, 1961,
to the same extent that an offense committed prior to that
date was a sex offense for the purposes of this section prior
to September 15, 1961.

(g) Any offense defined in Section 286 or 288a of the
Penal Code prior to the effective date of the amendment
of either section enacted at the 1975–76 Regular Session
of the Legislature committed prior to the effective date
of the amendment.

(h) Any attempt to commit any of the
above-mentioned offenses.

(i) Any offense committed or attempted in any other state which, if committed or attempted in this state, would have been punishable as one or more of the above-mentioned offenses.

(j) Any conviction for an offense resulting in the requirement to register as a sex offender pursuant to Section 290 of the Penal Code.

(k) Commitment as a mentally disordered sex offender under former Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of the Welfare and Institutions Code, as repealed by Chapter 928 of the Statutes of 1981.

SEC. 2. Section 44020 is added to the Education Code, to read:

44020. Every person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level shall notify, in writing, the parents or guardians who reside with each pupil of that school whenever that school hires an employee who, in the course of his or her employment, will come in contact with minor pupils and who has been convicted of a sex offense, as defined in Section 44010.

SEC. 3. Section 44237 of the Education Code is amended to read:

44237. (a) Commencing October 1, 1985, every person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level shall require each new employee having contact with minor pupils and not possessing a valid California state teaching credential, or not currently licensed by another state agency that requires a criminal record summary, to submit on or before the first day of his or her employment, two sets of fingerprints to the Department of Justice for the purpose of obtaining a criminal record summary from the Department of Justice and the Federal Bureau of Investigation. This requirement is a condition of employment. It is the intent of the Legislature under this section to assist in the employment decision. This section shall not be construed, however, to prohibit the

1 employment of any person based upon his or her criminal
2 record.

3 (b) The Department of Justice shall furnish a criminal
4 record summary to the employer designated by a new
5 employee submitting fingerprints pursuant to
6 subdivision (a). The criminal record summary shall
7 contain only arrests resulting in a conviction and arrests
8 pending final adjudication. The criminal record summary
9 furnished to the employer shall be maintained by the
10 employer in a secured file separate from personnel files,
11 and shall be maintained in accordance with regulations
12 for Criminal Offender Record Information Security as
13 specified in Subchapter 7 (commencing with Section
14 700) of Chapter 1 of Title 11 of the California
15 Administrative Code.

16 (c) The Department of Justice shall review the
17 criminal record summary it obtains from the Federal
18 Bureau of Investigation to ascertain whether or not a new
19 employee has a conviction record or an arrest pending
20 final adjudication for any sex offense, controlled
21 substance offense, or crime of violence. The Department
22 of Justice shall provide written notification to the private
23 school employer only as to whether or not a new
24 employee has any convictions or arrests pending final
25 adjudication for any of those crimes, but shall not provide
26 information identifying any offense for which an
27 employee was convicted or arrested.

28 (d) The employer may request subsequent arrest
29 service from the Department of Justice as is provided
30 under Section 11105.2 of the Penal Code.

31 (e) As used in this section, the following terms shall
32 have the following definitions:

33 (1) "Crime of violence" means a conviction for any of
34 the offenses specified in *Section 273a of, in Section 273d*
35 *of, or* in subdivision (c) of Section 667.5 of, the Penal
36 Code, or a violation or attempted violation of Chapter 8
37 (commencing with Section 236) or Chapter 9
38 (commencing with Section 240) of Title 8 of Part 1 of the
39 Penal Code.

1 An out-of-state conviction for any violation or
2 attempted violation of any crime prescribed in this
3 paragraph shall also be deemed a crime of violence.

4 (2) “Controlled substance offense” means a felony
5 conviction for a violation or attempted violation of
6 Division 10 (commencing with Section 11000) of the
7 Health and Safety Code.

8 An out-of-state conviction for any violation or
9 attempted violation of any crime prescribed in this
10 paragraph shall also be deemed a crime of violence.

11 (3) “Employer” means every person, firm, association,
12 partnership, or corporation offering or conducting
13 private school instruction on the elementary or high
14 school level.

15 (4) “New employee” means any person hired to work
16 in a private school on or after July 1, 1985, on a regular,
17 paid full-time, or regular, paid part-time, basis who will
18 have contact with minor pupils.

19 (5) “Sex offense” has the same meaning as defined in
20 Section 44010.

21 (f) Any new employee who wishes to have his or her
22 employer consider information relevant to his or her
23 criminal record, such as evidence of rehabilitation, shall
24 be responsible for submitting these facts or
25 documentation to his or her employer.

26 (g) The Commission on Teacher Credentialing shall
27 send on a monthly basis to each private school a list of all
28 teachers who have had their state teaching credential
29 revoked or suspended. The list shall be identical to the list
30 compiled for public schools in the state. The commission
31 shall also send on a quarterly basis a complete and
32 updated list of all teachers who have had their teaching
33 credentials revoked or suspended, excluding teachers
34 who have had their credentials reinstated, or who are
35 deceased.

36 (h) The Department of Justice may charge each
37 applicant for a criminal record summary a reasonable fee
38 to cover costs associated with the processing, reviewing,
39 and supplying of the criminal record summary as

1 required by this section. In no event, shall the fee exceed
2 the actual costs incurred by the department.

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